IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6734 OF 2004

Sou. Sujata Shankar Lokhande .... Petitioner
Versus
State of Maharashtra & Others .... Respondents

Mr. R.M. Momin, Advocate for the Petitioner.
Mr. Solkar , AGP for Respondent Nos. 1 & 4
Mr. Vikas M. Mali for Respondent No.2.

CORAM : R.C. CHAVAN, J.
DATE : 12TH JANUARY 2007

P.C.

1) Rule, returnable forthwith. Respondent No. 2 having expired on 25/11/2004 and since his interest in the matter is not heritable, there is no question of bringing LRs of Respondent no. 2 on record. By consent, in terms of order dated 30th August 2004 the Writ Petition is taken up for hearing.

2) This petition is filed by the Sarpanch of Gram Panchayat Madhavnagar, District Sangli challenging the order passed by the Hon'ble Minister for Rural Development while considering the revision under Section 155 of the Bombay Village Panchayats Act, 1958.

3) The facts which led to the proceedings against the Petitioner could be stated as under :

3A) The Petitioner was elected as Sarpanch of Gram Panchayat on 28/11/2002. On 26/12/2002, she

was given an application dated 20th December 2002 for sale of scrap belonging to Panchayat. On 28th December 2002 the scrap seems to have been removed in pursuance to a letter allegedly written by the Petitioner - Sarpanch. Her opponents alleged that theft of scrap had taken place with the connivance of the petitioner and made a complaint to the Zilla Parishad, Sangli. The Chief Executive Officer of Sangli Zilla Parishad conducted an enquiry and submitted his report to the Standing Committee of Zilla Parishad, which concluded that the Petitioner had committed an irregularity and that she deserved to be warned.

3B) Respondent No. 2 R.B. Bedmutha preferred an appeal before the Divisional Commissioner under Section 39(3) of The Bombay Village Panchayats Act. The learned Additional Commissioner allowed the Appeal setting aside the order passed by the Standing Committee and removed the Petitioner from the post of Sarpanch as well as Membership of the Gram Panchayat by his order dated 15/01/2002. The Petitioner preferred the revision before the Government which was decided by the Hon’ble Minister for Rural Development. By his order dated 19th July 2004, the Minister allowed the revision application partly and set aside the order of the

Commissioner, so far as it related to removal of the Petitioner from the Membership of Gram Panchayat. He retained the order removing her from the post of Sarpanch. Aggrieved thereby the Petitioner filed this petition.

4) By virtue of interim relief granted in favour of the Petitioner on 17th August, 2004 the Petitioner has continued to hold the office of the Sarpanch till date.

5) I have heard learned Counsel for the Petitioner, Mr. Momin and learned AGP for the State. The learned counsel for the petitioner assailed the impugned order on the ground that the Petitioner was not shown to have committed any wilful misconduct warranting her removal under Section 39 of the Gram Panchayat Act. He submitted that she had been elected to the office of the Sarpanch only a month before the incident and had in good faith stated that the scrap belonging to the Gram Panchayat should be sold as per rules. He, therefore, submitted that the Standing committee of the Zilla Parishad had rightly concluded that the Petitioner might have committed some irregularity, but was not guilty of mis-conduct.

6) The learned AGP opposed this submission and stated that a person holding an elective office has to be extremely careful in safeguarding the trust reposed by the people in managing affairs of a local body. He, therefore submitted that if the Petitioner did not know as to what was the proper course of action, she should have refrained from permitting sale of scrap. I have carefully considered this contention. It does not appear that the endorsement made by the Petitioner on the letter at Annexure 'A" on 28/12/2002 indicated complicity of the Petitioner in misappropriation of the Gram Panchayat property. She had stated that action may be taken for sale of scrap as per Gram Panchayat Rules. In view of this, it is clear that the findings of the Standing Committee that the Petitioner may have committed irregularity was correct and was not required to be interfered with by the Additional Commissioner.

7) The learned counsel for the Petitioner also assailed the decision of the Additional Commissioner on the ground that the Additional Commissioner should not have entertained an appeal at the instance of Respondent NO. 2 Mr. Bedmutha who was the Member of the Gram Panchayat.

According to the learned Counsel, an appeal could have been filed only by a person aggrieved by the orders passed by the Standing Committee of Zilla Parishad and Shri Bedmutha could not have been a person aggrieved by the order passed. In order to understand the contention of the learned Counsel, it may be useful to reproduce Section 39 of The Bombay Village Panchayats Act, 1958.

> **"39. Removal from Office**.- (1) The [Standing Committee] may remove from office any member of any Sarpanch or Upa- Sarpanch who has been [guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of] or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or an Upa- Sarpanch so removed may at the discretion of the [Standing Committee] also be removed from the Panchayat :
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> . [Provided that, no such person shall be removed from office unless the Chief Executive Officer under the orders of the President of the Zilla Parishad concerned holds an inquiry after giving due

notice to the Panchayat and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer submits his report to the Standing Committee].

. [(1-A) Where a person is removed from office of the Sarpanch or Upa-Sarpanch, he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the Panchayat].

(2) The [Standing Committee] may subject to like condition disquality for a period not exceeding five years, any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omissions specified in sub-section (1) :

. Provided that such action is taken within a reasonable time after such resignation.

> (3) Any person aggrieved by an order of the [Standing Committee] under sub-section (1) or (2) may, within a period of thirty days from the date of the communication of such order, appeal to the Commissioner."

8) The learned Counsel for the petitioner submitted that expressions used in sub sections (1) and (2) of Section 39 clearly show that only a person against whom action has been taken would be the person aggrieved. The learned counsel for Petitioner pointed out that the proviso to Sub section(1) uses the expression "Provided that no such person". Again Sub section 1(a) refers to "a person". Sub section 2 refers to "any person, who had been guilty of acts of omissions". Therefore, according to the learned Counsel the reference to "any person" in sub section 3 clearly refers to a person who has suffered action under Sub Section (1) or (2) of The Bombay Village Panchayats Act.

9) The learned AGP submitted that such restrictive interpretation of the term "any person" was not warranted in the present case of alleged misconduct by a person holding a public office. For this purpose, he placed reliance on the Judgment of Supreme Court reported in A.I.R. 1975

SUPREME COURT 2092, Bar Council of Maharashtra v. M.V. Dabholkar. The Court had considered the scope of term person aggrieved appeared in Section 38 of The Advocates Act. The Court held in para nos. 26 and 27 of the Judgment as under :

> "26. The words "person aggrieved" are found in several statutes. The meaning of the words "person aggrieved" will have to be ascertained with reference to the purpose and the provisions of the statute. Sometimes, it is said that the words "person aggrieved" correspond to the requirement of locus standi which arises in relation to judicial remedies.
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> 27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally,

one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially

> affects his interests". It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette."

10) Learned AGP submitted that since the Court has observed that restrictive interpretation was to be employed only in disputes about property rights. When questions of conduct or morality of a professional are involved an appeal would be maintainable at the instance of person like late Shri. Bedmutha, who was a Member of the Gram Panchayat and a person aggrieved by the inadequate action taken by the Standing Committee.

11) Learned Counsel for the Petitioner countered the submissions made by learned AGP. He submitted that the Apex Court was dealing with the case of Bar Council, a body entrusted with the duty of maintaining high professional standards, and not that of a busy body at whose instance the jurisdiction of the Supreme Court was sought to be invoked. He, therefore submitted that no parallel could be drawn in the reported decision and the case at hand. The observations of the Apex Court are therefore inapplicable to a grievance made by a

political opponent who had nothing to do with high professional standards.

12) I have carefully considered the rival submissions advanced. There can be no doubt that a restrictive interpretation of the expression "person aggrieved" cannot be applied in case of persons holding public offices where question of high standard of professional conduct and morality are involved. All the same, since the Apex Court has held that the scope of the expression "aggrieved person" would depend on the context in which the expression is used in the statute, the scope would have to be discerned from the statute itself. As contended by the learned Counsel for the Petitioner, the use of the word "aggrieved person" in Subsection 3 of Section 39 of the Bombay Village Panchayats Act is clearly referable to a person who had suffered an order against him under Sub section (1) or (2) of Section 39. Therefore, an appeal would not be tenable at the instance of any one else. Therefore the learned Additional Commissioner could not have entertained appeal at the instance of respondent no. 2 and could not have disqualified the petitioner.

13) In view of this, the Petition must succeed

on both the grounds urged by the learned counsel for the Petitioner. The order of the Minister dated 09.07.2004 and that of Additional Commissioner, Pune dated 15.01.2004 are quashed and set aside

13) Rule is made absolute in above terms.

(R.C. CHAVAN, J.)